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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/638,570	08/14/2000	Roger William Gutwein	7721M	9947

27752 7590 09/08/2005

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER	
WEIER, ANTHONY J	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/638,570	GUTWEIN ET AL.	
	Examiner	Art Unit	
	Anthony Weier	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 May 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *55-79* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *55-79* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting Rejections

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 55-79 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6, 9-15, and 55-69 of copending Application No. 10/833757.

The claims differ in that the instant claims call for dispensing the brewed coffee. It is notoriously well known to dispense coffee after preparation of same, and it would have been obvious to one having ordinary skill in the art at the time of the invention to have included such step with respect to the steps of claims in copending Application No. 10/833757 as a conventional distribution of coffee that has been prepared.

The instant claims also differ in the particular amounts of coffee employed, the temperature of storage, the particular kind of coffee extracted, and the particular form of coffee treated. However, all of these considerations would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at

same as a matter of preference, for example, depending on the particular type and amount of coffee desired or available and the consideration of temperature depending on the particular temperature controls available.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

2. Claims 55-79 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-49 of U.S. Patent No. 6726947; claims 1-26 of U.S. Patent No. 6808731; and claims 1-19 of U.S. Patent No. 6759072.

The claims differ in that the instant claims call for dispensing the brewed coffee. It is notoriously well known to dispense coffee after preparation of same, and it would have been obvious to one having ordinary skill in the art at the time of the invention to have included such step with respect to the steps of claims in copending Application No. 10/833757 as a conventional distribution of coffee that has been prepared.

The instant claims also differ in the particular amounts of coffee employed, the temperature of storage, the particular kind of coffee extracted, and the particular form of coffee treated. However, all of these considerations would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at same as a matter of preference, for example, depending on the particular type and amount of coffee desired or available and the consideration of temperature depending on the particular temperature controls available.

The claims of U.S. 6808731 further differ in calling for the particular Delta Standard Yield value. However, it would have been further obvious to have eliminated determination of said value since the remaining process steps as claimed would have ultility by still providing a coffee beverage.

The claims of U.S. 6759072 further differ in a variety of method steps dealing with customization of the product to be prepared by using interface tools. However, it would have been further obvious to have prepared the coffee product without using such tools since it is notoriously well known to prepare coffee products by determining and remembering ingredients and amount values therein and to prepare coffee products by hand (with regard to at least initial delivery of ingredients).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 55, 63, and 64 are rejected under 35 USC 102(e) as being anticipated by Jefferson, Jr. et al.

Jefferson, Jr. et al discloses a process of preparing a brewed coffee beverage wherein coffee is brewed in a brewer, stored in same (in the presence of coffee

grounds) for a time including 10 minutes from the onset of brewing, releasing the coffee beverage through a filter after said storage and dispensing same into a coffee receptacle (see Abstract; claim 17; col. 4, line 53-65; Figures).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 56 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jefferson, Jr. et al taken together with Anson (U.S. Patent No. 5584229).

Jefferson, Jr. et al is silent regarding diluting the coffee extract after filtering but before dispensing. However, it is well known to dilute brewed coffee as a means, for example, to adjust the temperature of the dispensed product to a desired temperature as taught, for example, by Anson (see Figure 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the process of Jefferson, Jr. et al to include the dilution step so as to control the temperature of dispensed coffee beverage to a desired amount.

The claims further call for the particular amount of water to coffee extract employed in the dilution step. However, such determination would have been well within the purview of a skilled artisan, and, it would have been further obvious to have arrived at such ratio as a matter of preference depending on, for example, the strength

of prepared coffee beverage desired.

6. Claim 56 and 58-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jefferson, Jr. et al taken together with Cheng et al.

Jefferson, Jr. et al is silent regarding diluting the coffee extract after filtering but before dispensing. However, it is well known to dilute brewed coffee which has been concentrated and stored after a time period of, for example, up to six months as taught, for example, by Cheng et al (see Examples). It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided such dilution of the coffee extract at some later point to provide for added consumer convenience.

The claims further call for the particular amount of water to coffee extract employed in the dilution step. However, such determination would have been well within the purview of a skilled artisan, and, it would have been further obvious to have arrived at such ratio as a matter of preference depending on, for example, the strength of prepared coffee beverage desired.

The claims further call for diluting the extract about 5 minutes to about 48 hours after filtering but before dispensing. Although Cheng et al teaches packaging a brewed coffee concentrate for up to a large period of time, there is no specific recitation of opening the package and diluting/serving same in a time of 5 minutes to 48 hours. Nevertheless, once packaged, it would have been further obvious to have opened same for dilution and dispensing at any time period within the shelf-life of same, including at, for example, 48 hours, as a matter of preference.

7. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Jefferson, Jr. et al taken together with Kino et al.

The claims further call for the coffee extract to be stored in contact with the ground sealed from oxygen. It is well known to brew coffee in oxygen-free environments as taught, for example, by Kino et al (see claim 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to have prepared the coffee in Jefferson, Jr. et al in an oxygen-free environment to provide a fresher tasting coffee.

8. Claims 65, 66, 71, and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jefferson, Jr. et al taken together with Borland et al.

The claims further call for the particular amount of brew solids in the coffee extract. Borland et al teaches a ready-to-serve coffee beverages may have coffee solids concentration of, for example, 2.2% (col. 1, lines 36-43) and conventional ready-to-serve coffee beverages having coffee solids of, for example, 1% (col. 2, line11). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed a coffee solids content of 1% as a preferred conventional amount (as called for in claims 71 and 72). However, pertaining to claims 65 and 66, it would have been further obvious to have employed a coffee solids amount of, for example, 2.2% using the process of Borland et al to attain a more intense coffee beverage without harsh and bitter notes.

9. Claims 67-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jefferson, Jr. et al.

The claims further call for the particular amount of water, coffee, ratio of water

and coffee employed and the amount of coffee beverage dispensed. Although Jefferson, Jr. et al discloses all of these amounts, it is not set forth employing such amounts of water and coffee in conjunction with a brewed coffee storage time of, for example, 10 minutes as set forth in claim 17 therein. Nevertheless, such determinations would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such amounts as a matter of preference depending on, for example, the strength of coffee taste desired or the consumer appetite (with respect to amount of beverage dispensed) or the availability of either the coffee or water in dictating final beverage amount or coffee/water ratio.

The claims further call for the storage temperature of the coffee extract. Although Jefferson, Jr. et al is silent concerning a specific storage temperature, it should be noted that the lowest initial brewing water comes in at 170 C. Since Jefferson, Jr. et al does not continue to heat or maintain this temperature within the brewer, it is expected that the temperature therein would drop. In view of same, it is expected that the temperature of the stored coffee extract would fall below the lowest claimed temperature of 150 F after introduction of the brewing water within the brewing storage time (e.g. 10 minutes).

Claims 75 and 76 call for storage of the coffee extract at temperature above 150 C and 170 C. Although Jefferson, Jr. et al is silent concerning use of and sustaining temperatures above 150 F, such determination would have been well within the purview of a skilled artisan. It would have been further obvious to have maintained

said coffee at any temperature as a matter of preference depending on the particular temperature desired when consuming said beverage.

Claim 78 calls for the particular type of coffee employed. Although Jefferson, Jr. et al is silent regarding same, all of the claimed coffee types are notoriously well known, and it would have been further obvious to have arrived at using any one of same as a matter of preference depending on the taste desired, availability, or cost involved.

Claim 79 further calls for the form of coffee employed. Although Jefferson, Jr. et al makes reference to conventional coffee being ground and roasted (col. 1, lines 13 and 14), there is no reference to same specifically in view of the coffee brewed for 10 minutes in Jefferson, Jr. et al (other than the recitation that the coffee used in the invention is ground, col. 9, line 59). Nevertheless, it would have been further obvious as a matter of preference to have employed ground coffee that is also roasted as a conventional alternative coffee source.

10. Claims 61 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jefferson, Jr. et al taken together with GB 2111377.

The claims further call for filtering the coffee extract at least about 15 or 30 minutes after the onset of brewing the coffee beverage. Although Jefferson, Jr. et al discloses filtering after a brew time of 10 minutes, there is no recitation of doing same after at least 15 or 30 minutes. However, the relationship of increasing brew times to effect increase coffee strength is described in GB 2111377 (paragraph 80). It would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such time as a result effective variable depending on the particular

degree of coffee strength desired.

Response to Arguments

11. Applicant's arguments with respect to the instant claims have been considered but are moot in view of the new ground(s) of rejection.

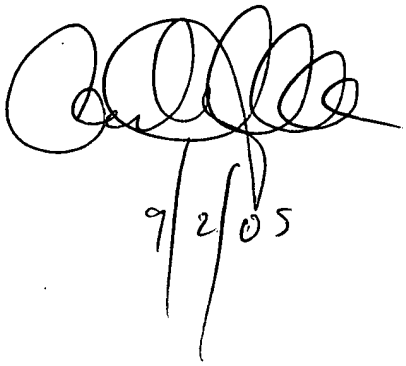
Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
Primary Examiner
Art Unit 1761



Anthony Weier
September 2, 2005